IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1714 of 1991
Date of Decision: 23.05.2007

Prem Nath & Anr. Petitioners

Vs.

Jai Gopal & Ors. ..Respondents

**Coram: Hon'ble Mr. Justice Vinod K.Sharma**

Present: Mr.Jas Pal Singh, Advocate
for the petitioners.

Mr.Alok Jain, Advocate,
for the respondents.

**Vinod K.Sharma,J. (Oral)**

This revision petition has been filed against the judgment passed by the learned Rent Controller as affirmed by the appellate authority ordering eviction of the petitioner from the shop in dispute on the ground that the premises have become unfit and unsafe for human habitation as also on the ground of subletting.

The respondent-landlord filed a petition under section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short the Act) for ejectment of the respondents from the shop bearing No.273 Ward No.6

situated in Kacha Bazar Sadhaura, Tehsil Naraingarh, District Ambala. Plea of non-payment as well as of material impairment of the value and utility of the demised premises were also taken. However, subsequently the petition was amended to include that the building has become unfit and unsafe for human habitation. As on the first date of hearing arrears of rent with interest and costs were tendered issue of non-payment of rent was therefore, decided in favour of the tenant.

The plea of subletting was also taken for eviction.

On the pleadings of the parties the following issues were framed by the learned Rent Controller:-

1. Whether the respondents are liable to be ejected from the premises in question as alleged in the petition? OPP
2. If issue No.1 is proved, whether the petitioners have no locus standi to file the present petition? OPR
3. Whether this court has no jurisdiction to try the present petition? OPR
4. Whether the petitioners are estopped from this petition as alleged in additional plea no.4 of the reply? OPR
5. Whether the respondents are members of Joint Hindu Family from the very beginning, if so, to what effect thereof? OPR

5-A. Whether the respondents are liable to be ejected on the ground that the shop has become unsafe and unfit for human habitation? OPA

6. Relief.

Learned Rent Controller on issue No.1 recorded a finding that original owner Prem Nath has started the business of Pan-Bidi in the demised shop which was closed after 4 years and shop was handed over to Amarjit Singh, respondent No.2. This evidence was sought to be rebutted on the plea that the respondent-tenants were brothers and member of Joint Hindu Family and their business was joint from the very beginning. The plea of subletting was, therefore, sought to be rebutted. However, learned Rent Controller took note of the fact that rent note Ex.PH was in favour of respondent No.1 alone. It was also proved on record that the rent note contained a stipulation that the shop would not be sublet to any third party and thus, the plea of the petitioners that the shop was taken in the joint name of both the petitioners was disbelieved. Learned Rent Controller further recorded a finding that the petitioner-tenants failed to prove that there was joint business being conducted in the premises as no account books of the demised shop was produced nor any evidence was produced to show that the Family was joint. On consideration of evidence, learned Rent Controller held that subletting was proved by the petitioner No.1 in favour of petitioner No.2. Plea that Ramji Dass was tenant was also decided against the petitioner-tenants. On issue No.5-A a finding was recorded that the shop was not fit for human habitation.

In appeal findings recorded by the learned Rent Controller were affirmed and ejectment was ordered on the ground of subletting as well as on the ground that the building has become unfit and unsafe for human habitation.

It is also not in dispute that the shop in dispute stands demolished and new construction has been raised. Learned counsel appearing on behalf of the petitioners contended that the findings of the courts below cannot be sustained as the ground of subletting was not proved on record. The contention of the learned counsel for the petitioners is that once it was proved on record that the petitioners are real brothers then presumption of business being joint was required to be drawn and there could be no question of subletting. I find no force in this contention.

The learned courts below have noticed that it has come in the evidence that both the brothers were living separately for the last 20-22 years and further they have failed to produce on record any account books that the business was joint and therefore, learned courts below were right in coming to the conclusion that petitioner No.1 has sublet the shop in dispute to petitioner No 2 and therefore, petitioners were rightly ordered to be evicted on the ground of subletting.

The learned counsel for the petitioner contends that the plea of unfit and unsafe was not available to the respondents as they had taken forcible possession of the shop in dispute and thereafter demolished the same. The fact remains that the building as proved on record was unfit and unsafe for human habitation and that stands demolished.

No ground is made out which may call for interference by this court in the impugned orders by this court in exercise of revisional jurisdiction.

Dismissed.

**May 23,2007** **(Vinod K.Sharma)**
rp **Judge**